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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 11, 2001

APPLICATION OF

VIRGINIA ELECTRIC AND  
POWER COMPANY

CASE NO. PUE000745

For a certificate of public  
convenience and necessity  
pursuant to the Utility  
Facilities Act, and authority  
pursuant to the Utility Transfers  
Act, to acquire cogeneration  
facilities in Altavista, Hopewell,  
and Southampton, Virginia

ORDER FOR DOCKETING AND NOTICE

On December 21, 2000, Virginia Electric and Power Company ("Virginia Power" or the "Company") filed an application with the State Corporation Commission ("Commission") pursuant to the Utility Facilities Act ("Facilities Act"), §§ 56-265.1 through 56-265.9 of the Code of Virginia, for a certificate of public convenience and necessity for the acquisition of three 70 MW coal-fired cogeneration facilities (the "Facilities").

The Facilities are located in the town of Altavista, the city of Hopewell, and the county of Southampton, Virginia. The Facilities are currently owned by three general partnerships, respectively, LG&E-Westmoreland Altavista, LG&E-Westmoreland Hopewell, and LG&E-Westmoreland Southampton (the "Partnerships"). According to the application, Virginia Power

currently purchases all the electrical capacity and energy output of these Facilities pursuant to Power Purchase and Operating Agreements ("PPAs") entered into by the Company and the original owner of the Facilities, Ultra Cogen Systems, Inc.

The Partnerships have entered into a Put and Call Agreement with Virginia Power.<sup>1</sup> The sale of the interest in the Facilities will result in the dissolution of the Partnerships at closing, the termination of the PPAs, and the transfer of title to the Facilities from the Partnerships to Virginia Power. Both federal and state approval are required for the consummation of this proposed transaction.

Virginia Power is required by § 56-590 of the Virginia Electric Utility Restructuring Act to functionally separate its generation, transmission, and distribution assets. The Company has filed with the Commission its functional separation plan to transfer the Company's generation assets and its non-utility generation ("NUG") contracts to an affiliated company. Virginia Power states in its application that the acquisition of the Facilities is one of the steps the Company plans to take with respect to its NUG contracts in the transition to functional separation.

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<sup>1</sup> The Partnerships may exercise their "put" option between January 5, 2001, and September 30, 2001. Virginia Power may exercise its "call" option between March 1, 2001, and September 30, 2001.

As required by the Facilities Act, Virginia Power seeks a certificate of public convenience and necessity to acquire these Facilities for use in public utility service. Virginia Power argues that the acquisitions will allow the Company to own and maintain the capacity it needs in the near term, to obtain the flexibility to operate the Facilities as needed, and to lower the costs associated with the Facilities.

Virginia Power submits, in its application, that the Company does not require approval under the Utility Transfers Act (the "Transfers Act"), §§ 56-88 through 56-92 of the Code of Virginia, for this acquisition. Virginia Power asks that, should the Commission determine the Transfers Act applies, we grant authority to the Company to acquire the Facilities.

Section 56-89 of the Transfers Act provides that it "shall be unlawful for any public utility . . . to acquire or dispose of any utility assets . . . unless such acquisition or disposition shall have been authorized by the Commission."

Section 56-88 of the Transfers Act defines "utility assets" as "the facilities in place of any public utility or municipality for the production, transmission or distribution of electric energy . . . ." According to Virginia Power, the Partnerships are not "any public utility or municipality" as used in the definition of "utility assets." Virginia Power argues the Partnerships are owners of qualifying cogeneration facilities

under the Public Utility Regulatory Policies Act of 1978 that are under no public service obligation in the Commonwealth, and are not certificated under the Facilities Act.

Virginia Power's application also submits that the Facilities do not fall within the definition of "public utility" in § 56-88 of the Transfers Act. This section defines "public utility" as "any company which owns or operates facilities within the Commonwealth for the generation, transmission or distribution of electric energy for sale . . . ." Virginia Power argues that the Facilities do not make sales of electricity that are subject to Commission regulation, rather the sales are wholesale, and that the Facilities do not have retail customers who will be affected by the acquisition.

We disagree with Virginia Power that the Company does not need authority pursuant to the Transfers Act, and find that the Transfers Act does apply. The definition of public utility includes any company, regardless of whether the Commission certifies them, making sales of electric energy generation. There is no distinction between retail or wholesale sales. We found the Transfers Act applicable in a prior case pertaining to the purchase by Virginia Power of a qualifying cogeneration facility.<sup>2</sup> We are not convinced that the Transfers Act is not applicable here as well.

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<sup>2</sup> In Application of Virginia Electric and Power Company, For a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2, and Joint

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the Utility Facilities Act, §§ 56-265.1 through 56-265.9 of the Code of Virginia, and the Utility Transfers Act, §§ 56-88 through 56-91 of the Code of Virginia, the application for a certificate of public convenience and necessity and authority to acquire utility assets is docketed as Case No. PUE000745.

(2) On or before January 22, 2001, Virginia Power shall serve a copy of its application and this Order on the mayor of the town of Altavista, the mayor of the city of Hopewell, and the Chairman of the Board of Supervisors of the county of Southampton, Virginia.

(3) On or before January 22, 2001, Virginia Power shall make copies of its application, this Order, and all materials it may subsequently file in this proceeding available for public inspection during regular business hours at the Staunton River Memorial Library, 500 Washington Street, Altavista, Virginia 25517; the Appomattox Regional Library, 245 East Cawson Street, Hopewell, Virginia 23860; and the Walter Cecil Rawls Library, 22511 Main Street, Courtland, Virginia 23837.

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Application of Virginia Electric and Power Company, Richmond Power Enterprise, L.P., and Enron Power Marketing, Inc., For authority to enter into a purchases power contract without competitive bidding, (Case No. PUE960092), 1996 S.C.C. Ann. Rept. 313, Commission Staff noted the requested transfer required Commission approval under the Transfers Act as well. We granted authority pursuant to the Transfers Act to consummate the transfer.

(4) On or before January 22, 2001, Virginia Power shall cause the following notice to be published as display advertising (not classified) once in newspapers having general circulation in the town of Altavista, the city of Hopewell, and the county of Southampton, Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION BY  
VIRGINIA ELECTRIC AND POWER COMPANY FOR A  
CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY AND AUTHORITY TO ACQUIRE  
COGENERATION FACILITIES IN ALTAVISTA,  
HOPEWELL, AND SOUTHAMPTON, VIRGINIA  
CASE NO. PUE000745

On December 21, 2000, Virginia Electric and Power Company ("Virginia Power" or the "Company") filed an application with the State Corporation Commission ("Commission") under the Utility Facilities Act, §§ 56-265.1 through 56-265.9 of the Code of Virginia, for a certificate of public convenience and necessity for the acquisition of three 70 MW coal-fired cogeneration facilities ("Facilities"). In addition, Virginia Power seeks authority to acquire these Facilities pursuant to the Utility Transfers Act, §§ 56-88 through 56-92 of the Code of Virginia.

The Facilities are located in the town of Altavista, the city of Hopewell, and the county of Southampton, Virginia. The general partnerships that currently own the Facilities have entered into a sales agreement with Virginia Power. The sale of the interest in the Facilities will result in the dissolution of the partnerships at closing, the termination of power purchase and operating agreements entered into by the Company and the original owner of the Facilities, and the transfer of title to the Facilities from the partnerships to Virginia Power. Both federal and state approval are

required for the consummation of this proposed transaction.

A copy of the application and related materials is available for public inspection between the hours of 8:15 a.m. and 5:00 p.m. on Commission business days in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia. A copy of the application and related materials also is available for public inspection during regular business hours and days at the Staunton River Memorial Library, 500 Washington Street, Altavista, Virginia 25517; the Appomattox Regional Library, 245 East Cawson Street, Hopewell, Virginia 23860; and the Walter Cecil Rawls Library, 22511 Main Street, Courtland, Virginia 23837.

Any interested person may submit written comments on the application. Interested persons may also request a public hearing. Any request for public hearing should identify issues that can best be resolved by oral testimony and cross-examination. Any written comments or requests for hearing must be filed by February 9, 2001, with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Correspondence should refer to Case No. PUE000745. Copies of comments and requests for hearing shall simultaneously be sent to counsel for Virginia Power, James C. Roberts, Esquire, Mays & Valentine, L.L.P., 1111 East Main Street, Richmond, Virginia 23219.

If no sufficient request for hearing is received, a formal hearing with oral testimony may not be held, and the Commission may make its decisions, based upon papers filed in this proceeding.

VIRGINIA ELECTRIC AND POWER COMPANY

(5) Any interested person may file written comments on the application, or may request a public hearing. Any request for a hearing shall identify issues that can best be resolved by oral testimony and cross-examination. Any written comments or requests for hearing must be filed by February 9, 2001, with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Correspondence should refer to Case No. PUE000745. Copies of comments and requests for hearing shall simultaneously be sent to counsel for Virginia Power, James C. Roberts, Esquire, Mays & Valentine, L.L.P., 1111 East Main Street, Richmond, Virginia 23219.

(6) On or before February 12, 2001, Virginia Power shall file with the Clerk of the Commission certificates of service and posting ordered in Paragraphs (2) and (3) above, and a certificate of publication ordered in Paragraph (4) above.

(8) The Commission Staff shall review the application and, on or before February 20, 2001, shall file with the Clerk of the Commission an original and fifteen (15) copies of its report and shall serve a copy on all parties.

(9) On or before February 23, 2001, Virginia Power may file with the Clerk of the Commission an original and fifteen (15) copies of any comments on the Staff Report and shall serve a copy on all parties.

(10) Applicants shall respond to written interrogatories within three (3) calendar days after receipt of same. Except as modified above, discovery shall be in accordance with Part VI of the Commission's Rules of Practice and Procedure ("Rules").

(11) This case shall be continued generally.